

that unless some ground touching their rights can be shown, he would be making a bad precedent by opening a decree for the purpose asked.

Upon the whole, he thinks, the petition must be dismissed, and the trustees left at liberty to proceed, but under the circumstances of the case, costs will not be allowed.

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JOHN H. B. LATROBE for Petitioners.

JOSEPH J. SPEED and HENRY WEBSTER for the Decree.

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JOHN A. THOMPSON, PERMANENT  
TRUSTEE OF GEORGE S. DAVIS

vs.

DANIEL B. BANKS.

} DECEMBER TERM, 1849.

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[AN ABSOLUTE DEED TREATED AS A MORTGAGE.]

THERE can be no doubt that upon proper averments, and upon sufficient evidence, this court may treat an absolute deed as a mortgage, and decree a redemption of the property, by the mortgagor, or sale, for the purpose of paying the sum due.

That fraud may be inferred from facts and circumstances, from the character of the contract, or from the condition and circumstances of the parties, is well established.

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The proceedings in this cause were instituted on the equity side of Baltimore County Court by the complainant, as trustee of George S. Davis, an insolvent debtor, for the purpose of having a deed executed by Davis, to the defendant, dated the 25th of September, 1840, and purporting to be an absolute conveyance, declared a mortgage. The allegations of the bill, (and which are substantially supported by the evidence,) are, that said Davis, about the year 1838, purchased a lot and dwelling house situated on Fayette street, in the city of Baltimore, of one George A. Hughes for the sum of \$1450, subject to a ground rent of \$45. That Davis, subsequently, being in want